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AUTHOR Smith, Diane
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ABSTRACT

This paper describes provisions under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 that require public school systems to purchase assistive technology for students who require it to benefit from special education. It explains eligibility under IDEA and how parents can write their child's principal and request an evaluation for eligibility under IDEA. The definition of assistive technology devices and services under IDEA is provided, along with information on the requirement that the district must provide assistive technology devices and services to the student if they are required for the student to achieve a free and appropriate public education. IDEA provisions that require students to be educated in the least restrictive environment possible, and how assistive technology allows a student to participate in a less restrictive setting are also explained. The paper maintains that the district is responsible for the maintenance of assistive technology equipment, barring actual negligence or misuse by a parent, student, or others, and that if the student needs to use the equipment at home in order to benefit from his or her education, the district must provide it. Procedural safeguards under IDEA are also addressed. (Contains 30 references.) (CR)

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The Right to Technology Under The Law of Special Education: Advocacy Tips, Special Education Basics, and Assistive Technology Specifics

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Diane Smith
Michigan Protection & Advocacy Service
106 West Allegan, Suite 300
Lansing, MI 48933
Voice/TD: (517) 487-1755
Fax: (517) 487-0827

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Public schools are a very appropriate funding source for assistive technology (AT) consumers who fall within the age range covered by special education in the consumer's state of residence. Two federal laws, the Individuals With Disabilities Education Act(1) (IDEA) and Section 504 of the Rehabilitation Act of 1973(2) (Section 504), require public school systems to purchase AT for students who require it to benefit from special education. This may include AT which is used only at home or at an extracurricular activity.

The Basics:

Federal funding is granted to states to provide for a portion of the cost of the services required by IDEA. Each state must create and abide by a state plan which meets certain legal requirements in order to receive the federal funding. This plan is publicly available and valid for three fiscal years.(3) A state may disburse the money to local school districts to provide the required services, but the state education agency remains ultimately responsible for compliance with the law's requirements.(4)

The IDEA is used to fund AT more often than Section 504 is because Section 504 does not provide funds to states to assist them in complying with the Act as the IDEA does, and the service provision and enforcement mechanisms under the IDEA are clearer and more accessible than those of Section 504. In order to be found eligible under IDEA, a student must have a disability that is covered by the criteria in one of thirteen specific eligibility categories.(5)

If a parent believes his or her child has one of the disabilities specified below and that child is not already eligible for special education, he or she should write the child's principal and request an evaluation for eligibility under IDEA.(6) There is no reason why the letter cannot request evaluation under both IDEA and Section 504, for the sake of efficiency, since if the child is not eligible under IDEA, he or she may be eligible under 504. It is best to send the letter by certified mail, return receipt requested, so there is proof that notice of the parent's concern has been provided to the district. The letter should indicate the parent's reasons for the request, even though parents are not normally experts in the field of special education-- Parents are only obligated to express their concerns to the extent that they are able to do so. The district has its own obligation to evaluate the child if it has reason to suspect that the child has a disability, even if the parent has never communicated his or her concern about the child to the district.(7) If district staff request an eligibility evaluation of the student, the parent must be provided notice to that effect.(8)

The evaluation is completed by an evaluation team, which presents its findings at a meeting. States vary in the names they give these meetings and the education plans that are developed at them, but the federal regulations refer to the education plan specifically as an Individualized Education Program or IEP. The federal regulations dictate which district personnel must be at the meeting to determine whether or not the child is eligible under IDEA.(9) and if eligible, an educational plan for the child is created at this meeting.(10) The parent, of course, must also be at this meeting.

The IEP must specify, among other things, the specific Special Education and Related Services which will be provided to the child.(11) Special Education and Related Services are legal terms which are defined in the federal regulations at 34 CFR 300.16(1997) and 300.17(1997). It is absolutely vital that every service the district agrees to provide at the IEP meeting is documented in writing in the IEP. It is very difficult for the parent to later prove what was promised at the meeting if it is not documented in the IEP.

AT Specifies:

The district must provide assistive technology devices and services to the student if they are required for the student to achieve a Free and Appropriate Education (FAPE). This phrase is defined by 34 CFR 300.8(1997) as "special education and related services that -- (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA (state education agency), including the requirements of this part; (c) Include preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an IEP that meets the requirements of Sections 300.340-300.350(1997). According to 34 CFR 300.308(1997), AT must be provided if it is required as Special Education (34 CFR 300.17(1997), Related Services (34 CFR 300.16(1997)) or Supplementary Aids and Services, (34 CFR 300.505(b)(2)(1997)). The district can also be required to provide services other than those listed in 34 CFR 300.16 and 300.17(1997), if they are required to achieve FAPE.

In addition, the IDEA requires that students be educated in the Least Restrictive Environment(12) possible. Often, AT allows a student to participate in a less restrictive setting than he or she would without it. For example, a child with physical impairments may be able to participate fully in the regular education class room for his grade rather than a self-contained special education classroom because his wheelchair and laptop computer allow him to participate independently.

The IDEA was reauthorized in 1997 with some substantial revisions. Beginning in July 1998, AT must be considered by the IEP team at every IEP meeting of every child eligible under IDEA, regardless of disability. Obviously, AT need not be provided if the team deems it inappropriate for the student to achieve FAPE, but the team must consider AT as a possibility before it can be omitted from the plan.(13) This is a major improvement, because it is often the case that AT is only considered at an IEP meeting when a parent or a staff member forces the issue.

When the child turns 14, the IEP team must annually consider the child's transition service needs. Transition, legally defined at 34 CFR 300.18(1997), involves the planning and implementation of the services the student will require in order to prepare for activities after high school graduation, such as post secondary education or work. The AT the student will require to meet transition goals should be considered at every transition planning session, as well as what will happen to any devices the student is using at school upon his or her graduation. Many districts have found ways to transfer a district owned device to an agency that will be responsible for buying AT for the student after graduation, so that there is not a gap while the student is transitioning to the next activity where he or she has no device to use. Vocational rehabilitation services or the state's department of developmental disability services. Vocational rehabilitation services and the state's department of developmental disability services are examples of agencies which may be responsible for the student's AT needs after graduation.

Simply knowing that a student has a right to and a need for AT is often not enough to ensure that the student receives it. This is the point where true advocacy begins. If a parent feels AT is required after the student is found eligible for special education, he or she should request in writing that the district provide an AT evaluation in the same manner as he or she did for the initial request for evaluation. This letter of request should specify, as best the parent is able, why the parent believes an evaluation is needed and include any objective evidence the parent has of the specific need(s) that AT can potentially fulfill for the child; even if this evidence is merely information about a particular type of product the parent has heard about. Again, the parent is not expected to be an expert on the topic, but a letter which states only that the parent wishes for an AT evaluation may not provide sufficient information for the district to develop an appropriate evaluation team.

The first step in the evaluation process is for the district to determine the composition of the evaluation team. Most districts have, or have contracts with, AT evaluation entities. The team should include experts versed in *all areas related to the suspected disability*, because this is required by the regulations(14) and because it only makes sense to evaluate the student's entire need for AT. Evaluating for only one disability may provide a recommendation for a device the student cannot actually use or use efficiently. Also, if the need for computer hardware is evaluated, software and peripheral needs (mounting systems, cables, printers, batteries, modems, cd rom drives, etc.) should be evaluated at the same time (15) Otherwise, once the hardware is provided, the student must wait while the software or peripherals are selected, ordered, and frequently debated, by the parties.

Many experts, regardless of how well versed they are in their fields, may not know enough about current assistive technologies to truly evaluate the student's needs. It is fully acceptable for the parent to inquire what training the evaluators have had specifically in AT. For instance, a speech pathologist may not have attended any recent conferences on augmentative communication, done any recent reading on the topic, been trained to use a device, nor ever programmed a device for a particular student. Such a pathologist would not know what options are truly available for the student. Under these or similar circumstances, the district should use an outside evaluator with appropriate expertise.

Example (created from a composite of several actual cases):

Peter is in 8th grade and has a severe writing disability which causes him to hand write very slowly. He types faster than he writes, although still not at grade level. His parents request an AT evaluation because they have been told that a laptop with word prediction software will allow him to complete written assignments more quickly and will be especially useful when he enters high school next year. The district rejects the request because if Peter has a laptop "all the kids will want one" and because he can complete all of his written assignments during the twice weekly computer lab period. However, his homework assignments take hours and usually he dictates his assignments to his mother. She is frustrated and exhausted by this process and he is far behind in Language Arts.

The district's "AT evaluation" is completed by a teacher who is a computer enthusiast but has no real training in educationally related AT, and is not trained in learning disabilities. As a result, the evaluation confirms the district's previous conclusion. Peter's parents request an AT evaluation at a university rehabilitation technology lab with an LD specialist on staff, at school district expense. The request is granted and the resulting evaluation is thorough. It specifies available software options and integration techniques for the use of the computer in Peter's classes. With pressure, the IEP team includes the AT in Peter's IEP and the district purchases the computer and software. It hires an outside consultant to train Peter on the device because the district's AT "expert" is not familiar with this software. Peter uses the laptop for all written assignments at school and home and will take it with him to the high school next year. He now has a B plus in Language Arts.

A very important right that parents have with any special education evaluation is the right to an

independent evaluation at school district expense. The district has the right to complete its evaluation first, regardless of how thorough that evaluation is. The parent may then request an independent evaluation if dissatisfied with the district's evaluation. If the district believes that its evaluation was appropriate, it may contest payment of the independent evaluation at a due process hearing. If the parent loses, the parent still has the right to have an evaluation done at his or her own expense and the results of that evaluation must be considered by the IEP team.(16) Practically speaking, it is almost always more expensive for the district to contest payment for the independent evaluation than it is to simply pay for it.

Once the evaluation is completed, the IEP team determines what AT is to be provided to the student based on the recommendations of the evaluators. The AT is then purchased and the implementation of the AT training and use portions of the IEP begins. Unfortunately, the battle still may not be over. Issues often arise regarding the integration of the AT into the student's school day, staff training, warranties, insurance and repairs. Goals and objectives for its training and use by the student must also be developed. It is best to anticipate as many of these issues as possible and include the resolutions in the IEP(17) BEFORE they become problems.

The district is responsible for the maintenance of the equipment, barring actual negligence or misuse by a parent, student or others.(18) In addition, if the IEP team determines that the student needs to use the equipment at home in order to benefit from his or her education, the district must provide it.(19) The same goes for extracurricular activities. For instance, if a student is learning how to use an augmentative communication device to communicate at school, practice using that device in a conversational setting at home or at Boy Scouts may be useful. Laptops are usually as useful for homework as they are for schoolwork. In such cases, it is always best to document the district's obligation to fully insure the device in the IEP, even though its duty to maintain the device exists separate and apart from the IEP document, to prevent conflict if the device is damaged away from school property.

The IDEA has very specific procedural safeguards. If a parent wishes to contest a district's decision regarding the student's eligibility or program, the parent has a right to a due process hearing.(20) Following that, the parent may appeal to U.S. District Court.(21) Some states also have an intermediate level of appeal. The student's program may not be changed while an issue is being resolved at hearing.(22) If the parent feels that a special education law or regulation has been violated, for example if provisions of the IEP are not being implemented properly, recourse may be sought through the special education complaint process. This is a route completely separate from the hearing and appeal process.(23) Section 504 provides the same right to AT as does the IDEA, but its eligibility criteria are less specific. The student need only meet the definition of "qualified handicapped person."(24) The district may not discriminate against that student based on handicap as long as it is a recipient of federal funds.(25) A student must be evaluated to be deemed eligible(26) and once eligible, receives a 504 plan which is similar to an IEP. The district must provide that student with "free and appropriate education" equivalent to that provided to non-handicapped students, even if achieving FAPE requires the provision of special education or related aids and services, such as AT,(27) and even though the district gets no federal funds to do so. There is a placement requirement similar to least restrictive environment (LRE), as well.(28) The procedural safeguards in Section 504 are roughly equivalent to those provided by the IDEA. There is a right to an impartial hearing but its protections are not as specific as IDEA's. Compliance with the procedural safeguards of the IDEA is considered compliance with the requirements of Section 504.(29) Complaints are handled by the Office of Civil Rights.(30) Generally speaking, it is best for parents to use the IDEA whenever possible because it is so much more specific about their rights.

1. See generally 20 USC 1400 et seq.; 34 CFR Parts 300 and 301.

2. See generally 29 USC 794 et seq.; 34 CFR 104.1 et seq. and 104.31 et seq. Sources of authority for IDEA include the federal statute and regulations, letters from the Office of Special Education Programs and the Office of Civil Rights, hearing officer decisions and appeals, federal case law, the state plan and often a state statute and regulations or rules implementing the state plan.

3. 34 CFR 300.110 (1997)

4. 34 CFR 300.2 (1997)

5. These are autism, deaf-blindness, deafness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, serious emotional impairment, specific learning disability, speech or language impairment, traumatic brain injury, visual impairment including blindness. 34 CFR 300. 7 (1997)

6. For the sake of consistency, I will use the term "parent" to refer to the requestor of services and child or student to refer to the recipient of these services, although the student has the same legal rights under the statute as the parent does once he or she turns 18, if there is no guardian assigned. School district staff may also request services for the student. "Parent" also refers to the requestor's advocate or attorney, who may exercise any rights that the parent has throughout the special education process.

7. 34 CFR 300.128 (1997)

8. 34 CFR 300.504 (1997)

9. 34 CFR 300.344 (1997)

10. 34 CFR 300. 340 et seq.(1997) (general requirement for IEPs)

11. 34 CFR 346 (1997)

12. 34 CFR 300.550 et seq. (1997)

13. 20 USC 1414(d)(3)(B)(v) West CD Rom, current through P.L. 105-22, 6/27/97)

14. 34 CFR 300.532(f)(1997)

15. The actual educational software selected by the district may be considered an educational "methodology decision" which is left to the discretion of the district. See decision of hearing officer, 25 IDELR 875(1997). The Individuals With Disabilities Education Law Report, LRP, 1997, is an excellent resource for authority on special education issues and is available in many university law libraries.

16. 34 CFR 300.503(1997)

17. See letter by federal Office of Special Ed. Programs (OSEP), 24 IDELR 854(1996)

18. OSEP letter, 25 IDELR 1212(1996); 21 IDELR 1057(1994). Other citations useful in the AT special education context are: 22 IDELR 642 (what legal authority OSEP letters may provide) 16 IDELR 1317; 18 IDELR 627; 19 IDELR 278; 19 IDELR 355; 20 IDELR 394; 20 IDELR 1216; 21 IDELR 265; 21 IDELR 753; 21 IDELR 1126 (availability of AT to children under age 3, under Part H/early intervention program); 22 IDELR 255; 22 IDELR 267; 22 IDELR 629; 22 IDELR 818; 22 IDELR 888; 22 IDELR 992; 23 IDELR 565; 24 IDELR 295; 24 IDELR 388; 24 IDELR 475; 24 IDELR 854; 24 IDELR 967; 25 IDELR 286; 25 IDELR 1023; 26 IDELR 224.

20. 34 CFR 506(1997)

21. 34 CFR 510, 511(1997)

22. 34 CFR 513(1997)

23. 34 CFR 660 et seq.(1997)

24. 34 CFR 104.3(k)(2)(1997). NB: The appendix to 34 CFR Part 300 and Appendix A to 34 CFR Part 104 provide very useful language.

25. 34 CFR 104.4(1997)

26. 34 CFR 104.35(1997)

27. 34 CFR 104.33(1997)

28. 34 CFR 104.34(1997)

29. 34 CFR 104.36(1997)

30. 34 CFR 104.61(1997)
